



faegredrinker.com

Lawrence J. Del Rossi
Partner
lawrence.delrossi@faegredrinker.com
212-248-3140 direct

Faegre Drinker Biddle & Reath LLP
1177 Avenue of the Americas, 41st Fl.
New York, NY 10038
+1 212 248 3140 main
+1 212 248 3141 fax

June 20, 2024

Hon. Arun Subramanian
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *Bryant, et al. v. Buffalo Exchange, Ltd.*, Case No. 23 Civ. 8286 (AS)

Dear Judge Subramanian,

Pursuant to Paragraph 5(d) of the Court's Civil Case Management Plan and Scheduling Order (ECF No. 23), the parties write jointly to request that the Court extend the discovery completion date from July 3, 2024 to September 13, 2024 for extraordinary circumstances.

Background

Plaintiffs commenced this action on September 19, 2023, alleging violations of the Fair Labor Standards Act and New York Labor Law § 191. (ECF No. 1.) On January 17, 2024, Defendant moved for judgment on the pleadings with respect to Plaintiffs' FLSA claim, (ECF No. 24), and Plaintiffs subsequently amended their Complaint to remove their FLSA claim (ECF No. 29). Thereafter, Defendant moved to dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6), or alternatively, temporarily stay the proceedings pending a potential appeal of *Grant v. Global Aircraft Dispatch, Inc.*, 223 A.D.3d 712 (2d Dep't 2024). (ECF No. 30.) Following briefing by the parties on Defendant's motion, on May 15, 2024, the Court ordered the parties to submit a joint letter updating the Court on the status of *Grant*. (ECF No. 41.) The parties submitted a joint letter on May 20, 2024 (ECF No. 42), and Defendant's motion to dismiss, or alternatively, temporarily stay the case, remains pending before the Court.

The Parties' Joint Request for Extension of the Phase One Discovery Completion Date

The parties submit that extraordinary circumstances exist to warrant an extension of the discovery completion date. As both parties noted in their briefing on Defendant's motion to dismiss, or alternatively, temporarily stay the case, there is a split of authority among the First and Second Departments regarding whether NYLL § 191 provides a private right of action. *Compare Vega v. CM & Assoc. Constr. Mgt., LLC*, 175 A.D.3d 1144 (1st Dep't 2019), *with Grant*, 223 A.D.3d 712. The Second Department has yet to issue a decision on the plaintiff's motion for re-argument and/or leave to appeal to the New York Court of Appeals in *Grant*. However, in the event the motion is granted and the New York Court of Appeals in turn grants leave to appeal, it may resolve the split of authority.

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Despite the uncertainty in the state of the law, the parties have exchanged initial written discovery requests and responses. The Court recently issued the Protective Order in this case. (See ECF 44.) Additionally, the parties continue to address written discovery disputes and anticipate that some issues may need to be brought to the Court's attention for assistance in the near future. However, the parties have not yet conducted depositions. Accordingly, additional time is needed for the Court to rule on Defendant's motion, and in the event the Court denies Defendant's motion, for the parties to schedule and conduct depositions. Moreover, this is the parties' first request to extend the discovery completion date, and their request is made in good faith and not for purposes of delaying the above-referenced action.

For these reasons, the parties therefore request that the Court extend the discovery completion date set forth in Paragraph 5(d) of the Court's Civil Case Management Plan and Scheduling Order from July 3, 2024 to September 13, 2024.

Respectfully submitted,

OUTTEN & GOLDEN LLP

FAEGRE DRINKER BIDDLE & REATH
LLP

By: /s/ Molly A. Brooks

By: /s/ Lawrence J. Del Rossi

OUTTEN & GOLDEN LLP

Molly A. Brooks
Michael C. Danna
Eliana J. Theodorou
Amy Maurer
685 Third Ave., 25th Floor
New York, New York 10017
Telephone: (212) 245-1000

Attorneys for Plaintiffs

**FAEGRE DRINKER BIDDLE & REATH
LLP**

Lawrence J. Del Rossi
1177 Avenue of the Americas, 41st Fl.
New York, NY 10036
Telephone: (212) 248-3140

Andrew B. Murphy
Kacie Phillips Tawfic
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-8897

Attorneys for Defendant

Application granted. But there will be no further extensions for any reason.

SO ORDERED.



Arun Subramanian, U.S.D.J.

Date: June 21, 2024